

Franciscan Alliance, Inc. v. Azar
Case No. 7:16-cv-108-O (N.D. Tex.)

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY,
and
HOUSTON BAPTIST UNIVERSITY,

Plaintiffs,

and

WESTMINSTER THEOLOGICAL
SEMINARY,

Plaintiff-Intervenor,

v.

KATHLEEN SEBELIUS, *et al.*

Defendants.

Civil No. 12-cv-3009

**Plaintiffs' Motion for
Extension of Time to File Petition
for Fees and Expenses**

The Court granted summary judgment and a permanent injunction in Plaintiffs' favor on December 27, 2013. Dkt. 133, 134. On January 22, 2014 the Court entered onto the docket certification of that order as a partial final judgment in favor of Plaintiffs. Dkt. 136. The time for Defendants to appeal has not yet run.

Federal Rule of Civil Procedure 54(d) provides that, absent an order from the court, motions for fees and expenses "be filed no later than 14 days after the entry of judgment." Since the certification was entered on January 22, 2014, Plaintiffs East Texas Baptist University and Houston Baptist University would normally file a motion for fees and expenses by February 5, 2014.

However, given the unique procedural posture of this case, the likelihood of appeal, and pending related litigation elsewhere, *see, e.g., Sebelius v. Hobby Lobby*, No. 13-354 (Supreme Court oral argument scheduled March 25, 2014); *Little Sisters of the Poor v. Sebelius*, No. 13A691 (application to Supreme Court for injunction pending appeal granted Jan. 24, 2014), Plaintiffs hereby move the Court to extend the time for filing a fee petition (under 42 U.S.C. § 1988 or other applicable law) until after resolution of the appeal in this case, if any. Waiting to decide the fee petition issue will preserve judicial and party resources while avoiding potentially duplicative litigation. Depending on how the appeal, if any, is resolved, the Court may want to wait until final judgment is issued on all claims before setting a schedule for submitting and briefing the fee petition.

Defendants were unable to state a position immediately on this motion, as undersigned counsel contacted counsel for Defendants in the afternoon. Counsel for Defendants anticipates stating Defendants' position by tomorrow morning. Given the impending deadline two days from now, Plaintiffs thought it advisable to file this motion today and update the Court with Defendants' position once Defendants have formulated it.

Respectfully submitted,

/s/Eric C. Rassbach

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Counsel for Plaintiffs East Texas Baptist

University and Houston Baptist University

Dated: February 3, 2014

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2014, the foregoing motion was served on all counsel of record via the Court's electronic case filing (ECF) system.

/s/ Eric C. Rassbach
Eric C. Rassbach